

features or functions), the Commission stated, 'must be (1) cost based; (2) consistent with the requirements of Section 276, with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) non-discriminatory.' The Commission drew no distinctions based on rate structure, nor did it make any other exceptions to the cost requirements. Thus, any payphone service rate, flat or usage based, must be justified by cost support materials as described in 47 CFR Section 61.49(g), and must satisfy the price caps new services test."

See Letter from Yog R. Varma, Deputy Bureau Chief, Common Carrier Bureau, to Ms. Caroline Vachier, Deputy Attorney General of New Jersey, October 5, 1999.

27. Attached to this Petition is an analysis prepared by Louis A. Ceddia, IPANY's cost and rate structure consultant, which sets forth the appropriate economic principles, and regulatory requirements, that govern the manner in which the wholesale payphone services obtained by IPANY members should be costed and priced. Mr. Ceddia concludes, for both economic and public policy reasons, that the rates established by the Commission for links and usage, using TELRIC principles, should be made available to pay telephone providers.

28. In so doing, Mr. Ceddia recognizes the public interest implications of maintaining a widespread deployment of public pay telephones, including the access they provide to the public switched network to many individuals and communities who do not otherwise have access to the telephone service necessary for their daily lives. Indeed, as LECs have removed their payphones from marginal areas, it has fallen to independent

operators, such as IPANY members, to fill in the void.

29. As substitutes for public pay telephone services have come into wide use, particularly through cellular phones, the economic base of the entire pay telephone industry has been threatened, to the point where large segments of the community may suffer a widespread decline in the availability of public telephone service.

30. In this regard, the volume of both local and toll calls made from public pay telephones has suffered a precipitous decline during the past year. Much of this is attributable to new rate programs offered by cellular carriers, under which it may frequently cost less to place a call over a cellular telephone than through a payphone. This phenomenon - and marketing opportunity - has not been lost on cellular providers, as exemplified by the annexed advertisement by OmniPoint in the May 27, 1999, Times Union, which states that under "OmniPoint's new low prepay rates, you can kiss the payphone goodbye."

31. The diversion of massive call volumes to cellular phones may, of course, benefit that segment of the population which can afford to purchase cellular service. That option is not, however, available to many segments of the public, particularly the low income and disadvantaged individuals who are most in need of public pay telephone service. In order to continue the availability of telephone service to these groups, efficient and non-discriminatory pricing of underlying services - including usage services - must be made available to independent

pay telephone operators.

32. Thus, to maintain the public pay telephone infrastructure now serving large segments of the community, and to assure the ability of independent pay telephone operators to remain in business and compete with wireless carriers and LEC payphone operations, the existing uncertainty over underlying pay telephone rates should be removed, and appropriate rates for lines, features, and usage should be established on an efficient, forward-looking TELRIC basis.

IV. ECONOMIC ANALYSIS

33. As set forth in the annexed economic analysis of Louis A. Ceddia, the policies underlying the FCC's New Services Test can best be effectuated by setting rates for underlying lines, features, and usage equivalent to TELRIC costs. Once total recoverable costs are identified, the effect of complementary revenue streams received by NYT - particularly EUCL and PICC charges - must be accounted for to avoid a double cost recovery.¹² That analysis is incorporated into, and serves as the basis for, this Petition.

¹² At least one other jurisdiction has concluded that EUCL charges (also known as SLC (subscriber line charge)) should be deducted from the unseparated cost of the PAL line to avoid the ILEC enjoying a double recovery. See Public Service Commission of West Virginia, Case 97-0643-T-T, Bell Atlantic - West Virginia, Inc., Tariff filing to comply with recently issued FCC Order... "Commission Order", May 27, 1998, at pg. 16.

V. CONCLUSION

For the reasons set forth in this Petition, as supported by the Affidavit of Louis A. Ceddia, this Commission should issue an Order directing New York Telephone to file revised tariffs for underlying payphone services, with PAL line rates retroactive to April 1, 1997, incorporating the rates demonstrated to be appropriate herein.

Respectfully submitted,

Independent Payphone
Association of New York, Inc.

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Dated: Albany, New York
December 2, 1999

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Central Atlantic Payphone
Association

v.

Bell Atlantic - Pennsylvania,
Inc.

Docket No. R-00973867C0001

ORDER DENYING MOTION TO DISMISS AND MOTION TO CONSOLIDATE

Before
Michael C. Schnierle
Administrative Law Judge

History of the Proceedings

On March 11, 1997, the Central Atlantic Payphone Association (CAPA) filed a complaint at this docket number against Bell Atlantic - Pennsylvania, Inc., concerning certain rates charged by Bell to independent payphone providers (IPPs). At the same time, CAPA filed similar, but not identical, complaints against GTE North Incorporated at Docket No. R-00973879C0001 and The United Telephone Company of Pennsylvania at Docket No. R-00973871C0001. CAPA also moved to consolidate the proceedings. Bell, GTE, and United filed amended tariffs as a result of various Commission and Federal Communications Commission requirements. CAPA then filed amended complaints against Bell and GTE, taking into account intervening tariff changes that affected portions of the earlier complaints. At a prehearing conference on October 27, 1997, CAPA stated that it expected to withdraw the complaint against United. Bell and GTE stated their intentions to file motions to dismiss all or portions of the amended complaints. Bell has now has filed its

motion to dismiss. CAPA has not withdrawn its complaint against United, but it also has not filed a new complaint against United. CAPA has filed a Brief In Opposition to Bell's Dismissal Motion. Bell has filed a Reply to CAPA's Brief.

The purpose of this order is to address the issues raised by Bell's motion, and, as an ancillary matter, to deny the motion to consolidate.

The Motion to Consolidate

While a presiding officer may consolidate cases involving a common question of law or fact, 52 Pa. Code §5.81(a), I conclude that consolidation of these cases would create more problems than it would solve. While the Bell and GTE cases involve similar issues, the specific rate structures are not at all alike. (Tr. 11-12). Since the litigation in each case will contest the reasonableness of the respondent's rate levels for certain services, and since those rates are based on each respondent's own unique costs, consolidation would serve no purpose in the development of a factual record. Accordingly, I will deny the motion to consolidate.

Bell's Motion to Dismiss

CAPA is an association of independent payphone providers (IPPs). In its complaint and amended complaint, CAPA contends that Bell's local measured usage rate is discriminatory, not cost-based, and does not meet the Federal Communications

Commission's "new services" test.¹ In its motion, Bell argues that the new services test is not applicable to its local measured usage rate, and, therefore, the complaint should be dismissed.

Section 276 of the Telecommunications Act of 1996 requires the implementation of regulations by the FCC designed "to promote competition among payphone service providers and provide the widespread deployment of payphone services to the benefit of the general public" Starting in the Fall of 1996, the FCC promulgated regulations and implemented Section 276 through the issuance of four orders - the first two by the Commission itself and the latter two by the FCC's Common Carrier Bureau. The four Orders are as follows: In the Matter of Implementation of the Pay Telephone Reclassification and Competition Provisions of the Telecommunications Act of 1996, Report and Order, (Sept. 10, 1996); Order on Reconsideration, (Nov. 8, 1996); First Common Carrier Bureau Order, ("First CCB Order") (April 4, 1997); Second Common Carrier Bureau Order, ("Second CCB Order") (April 15, 1997).

Bell acknowledges that the First CCB Order, and the Second CCB Order, require that all local exchange companies must have in effect both federal and state tariffs for payphone features and options already offered to IPPs on an unbundled

¹ CAPA's complaint and amended complaint also challenged Bell's rates for optional payphone services. Bell has made another tariff filing that further reduces these rates. That filing went into effect on January 16, 1998, by virtue of the Commission's failure to suspend or investigate it. CAPA's counsel stated on the record that if those rates are approved by the Commission, that issue will be "off the table." (Tr. 4). Accordingly, I consider those issues to have been resolved.

basis. Bell further acknowledges that the FCC has ruled that such tariffs must be cost-based, nondiscriminatory, and consistent with both Section 276 and Computer III guidelines, including the federal "new services" test. Bell further acknowledges that the review of state payphone tariffs for compliance with these federal requirements, including the "new services" test, was delegated to the states. (Bell Motion at 3-4). The crux of Bell's argument is that because local measured usage is not a payphone-specific feature, but rather is a feature available to all local exchange customers, it is not required to meet the new services test.

Bell bases its argument on the following statement in the First CCB Order at ¶18: "[W]e do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features." Bell argues that while local usage, like touchtone, toll usage and directory assistance, may be used by a payphone service provider, it is not a payphone specific service. Bell contends that local usage is a generic business offering uniformly available to all local exchange business customers under the same rates and conditions, and that therefore, state review of local usage rates under the federal "new services" test guidelines is neither required nor warranted by the FCC Payphone Orders. Bell further contends that the tariffed rates for usage have previously been approved by this Commission. Accordingly, Bell asks that the complaint be

dismissed for failure to state a claim under state or federal law. (Bell Motion at 4-5).

CAPA responds that the quote from the First CCB Order on which Bell relies is irrelevant to the issue here. CAPA notes that in the quoted sentence, the FCC merely states that local usage need not be tariffed at the federal level. CAPA contends that this quote does not address whether local usage must meet the new services test. CAPA argues that whether or not a payphone service is federally tariffed has nothing to do with whether the service is subject to application of the new services test. (CAPA Brief In Opposition at 15). CAPA also argues that local usage is a service that is essential to the provision of payphone service, and that the various FCC orders require that all services offered to payphone providers, which are tariffed at the state level, pass the new services test. In making this argument, CAPA also relies on a letter dated September 12, 1997 from the Chief of the FCC Common Carrier Bureau to the Chair of the North Carolina Public Utilities Commission. CAPA notes that it would make no sense for the FCC to require cost-based rates for other required payphone services, but not for usage, given that usage is absolutely essential. (CAPA Brief In Opposition at 8-13). Finally, CAPA argues that Bell cannot insulate its rate for local usage from Commission review simply by tariffing the service under its general business tariff, rather than under a separate payphone tariff. (CAPA Brief In Opposition at 12-13).

CAPA also contends that even if I find that the new services test is not applicable to local usage, CAPA's complaint

cannot be dismissed in its entirety because Pennsylvania law, which requires that rates charged a competitor be "just and reasonable," requires that the usage rate be cost-based. CAPA also argues that Bell's usage rate is discriminatory in violation of state and federal law. Thus, CAPA argues, its complaint cannot be dismissed even if the new services test is not applicable to Bell's local usage rate.

Bell responds to CAPA's arguments by contending that nowhere in any of the FCC orders cited by CAPA, or in the letter from the Common Carrier Bureau to the North Carolina PUC, is local usage specifically mentioned as being subject to the new services test. Bell contends that it has filed tariffs for payphone lines and features that do meet the new services test, but Bell contends that payphone lines do not include usage, and therefore, usage need not meet the new services test. Bell also argues that CAPA should not be able to raise now its claim that Bell's usage rates are unjust and unreasonable under state law because CAPA should have raised that claim in prior proceedings in which those rates were at issue.

I agree with CAPA that local usage as provided to IPPs is subject to the new services test. In my opinion, a fair reading of all of the FCC's pronouncements on this issue leads to the conclusion that it did not intend to exclude from applicability of the new services test local usage for payphones.

Bell's arguments on this issue are largely without substance. In essence, Bell maintains that because local usage is not a "payphone specific" service or feature, and because the

FCC does not mention it by name in any of its pronouncements on the matter, local usage is not subject to the new services test. Bell also points to the quoted passage in the First CCB Order where the FCC distinguishes between those services that must be federally tariffed, and those that need be tariffed only at the state level.

First, I agree completely with CAPA that the quotation relied upon by Bell from the First CCB Order has no relevance to the issue at hand. There, the FCC was only discussing whether a particular service had to be tariffed at the federal level, as well as at the state level. That issue has nothing to do with the issue presented here, namely, whether the rate charged for local usage must meet the federal new services test.

Second, while Bell is correct that the FCC does not specifically mention local usage in any of the cited documents, any reasonable reading of the FCC's orders compels the interpretation sought by CAPA. In its Order on Reconsideration, the FCC stated as follows:

We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines⁴⁹² for tariffing such intrastate services. States unable to review these tariffs may require the LECs operating in

their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the Report and Order.

492 The new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2). See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 8979, 6 FCC Rcd 4524, 4531 (1991) at paras. 38-44.

Order on Reconsideration, ¶163.

In the First CCB Order, the FCC's Common Carrier Bureau explained:

Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines.⁵

⁵ Id. at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at Id., n. 492.

First CCB Order at ¶2. Also:

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXCs claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory;⁵¹ and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be

removed from the intrastate local exchange service and exchange access service rates.⁹² LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation.⁹³ As discussed above,⁹⁴ LECs that have not complied with these requirements will not be entitled to receive compensation.

31. We disagree with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the Order on Reconsideration that it had jurisdiction over the tariffing of payphone services in order to implement Section 276.⁹⁵ The plain language of the Order on Reconsideration provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable Computer III guidelines.⁹⁶

⁹¹ Order on Reconsideration at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at para. 163, n. 492.

⁹² Payphone Order at para. 148.

⁹³ Any party who believes that a particular LEC's intrastate tariffs fail to meet these requirements has the option of filing a complaint with the Commission. 47 U.S.C. § 208.

⁹⁴ See paras. 6, 21, 29, above.

⁹⁵ Order on Reconsideration at para. 162.

⁹⁶ Id. at para. 163, n. 492

First CCB Order at ¶¶30-31.

Finally, in the Second CCB Order, the Common Carrier Bureau explained:

8. In the Order on Reconsideration, the Commission concluded that where LECs have already filed intrastate tariffs for payphone services, states may, after considering the requirements of the Order on Reconsideration, the Payphone Order, and Section 276, conclude: (1) that existing tariffs are consistent with the requirements of the Payphone Order, as revised in the Order on Reconsideration, and (2) that in such case no further filings are required.

.

13. On April 10, 1997, the RBOC Coalition, joined by Ameritech, requested that the Commission grant a limited waiver to extend for 45 days the requirement that a LEC's intrastate tariffs for payphone services comply with the federal guidelines set forth in paragraph 163 of the Order on Reconsideration, specifically that those tariffs satisfy the "new services" test. It requests that this 45-day period correspond to the same period of time that the Commission granted in its April 4, 1997 Bureau Waiver Order for limited waiver of the LECs' federal tariffs. The RBOC Coalition states that it is not seeking a waiver of the requirement that all of the BOCs have effective intrastate tariffs by April 15, 1997 for basic payphone lines and unbundled features and functions.

14. In support of its request, the RBOC Coalition argues that none of the BOCs "understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's new services test." It further argues that, in some states, there may be a discrepancy between the existing state tariff rates and state tariffs that comply with the new services test, which would require the LEC to file new tariff rates. In most states, however, the RBOC Coalition states, "ensuring that previously tariffed payphone services meet the new services test . . . should not be too problematic." The RBOC Coalition argues that this 45-day period would allow the LECs to file new intrastate tariffs in the states where it is necessary without

delaying its eligibility to receive compensation. It also states that special circumstances exist for a waiver in that the federal new services test had not previously been applied to existing state services, and that the LECs did not understand until the release of the Bureau Waiver Order that the Commission meant to require application of this test to those services. The RBOC Coalition also states that "[e]ach LEC will undertake to file with the Commission a written ex parte document, by April 15, 1997, attempting to identify those tariff rates that may have to be revised." In addition, the RBOCs state that they voluntarily commit "to reimburse or provide credit to those purchasing the services back to April 15, 1997". . . . "to the extent that the new tariff rates are lower than the existing ones."

18. Upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the Payphone Reclassification Proceeding, we conclude that while the individual BOCs may not be in full compliance with the intrastate tariffing requirements of the Payphone Reclassification Proceeding, they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders, as clarified by the Bureau Waiver Order, mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states. In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date. Therefore, we adopt this Order, which contains a limited waiver of the federal guidelines for intrastate tariffs, specifically the requirement that LECs have filed intrastate payphone service tariffs as required by the Order on Reconsideration and the Bureau Waiver Order that satisfy the new services test, and that effective intrastate payphone service tariffs comply with the "new services" test of the federal guidelines for the purpose of allowing a LEC to be eligible to receive payphone compensation, as discussed below.

The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the Order on Reconsideration, the Bureau Waiver Order and this Order become effective. Because other LECs may also have failed to file the intrastate tariffs for payphone services that comply with the "new services" test of the federal guidelines, we apply this limited waiver to all LECs, with the limitations set forth herein. (Footnotes omitted.)

Second CCB Order at ¶¶8, 13-14, 18. It appears that Bell was a member of the "RBOC Coalition" whose petition resulted in the Second CCB Order. Second CCB Order at n. 7.

In the face of these FCC pronouncements, in particular the Second CCB Order which clearly held that existing LEC payphone services were subject to the new services test, Bell nonetheless continues to argue that its usage rate is not a "payphone service" because it is not in Bell's payphone tariff, and because the FCC did not specifically identify it as being considered a "payphone service." In my opinion, both arguments are meritless.

The fact that Bell's usage rate may be in its general business tariff and not in its payphone tariff cannot insulate that rate from review under the new services test, particularly in light of the FCC's clear ruling that existing payphone services must meet that test. To hold otherwise would be to elevate form over substance to a ridiculous degree, and, in the process, let Bell dictate whether a particular rate is subject to review by placing that rate in one tariff rather than another. The FCC's orders surely do not compel such an absurd result.

Bell's second argument also is unconvincing. The FCC's failure to specifically mention local usage as one of the payphone

services to which the new services test applies does not compel a conclusion that the test does not apply. One can only reach that conclusion if one interprets the phrase "payphone services" throughout the FCC's orders as meaning "services that are used only by payphones," rather than "all services that are necessary for the provision of payphone services." Bell cites nothing that compels a conclusion that the FCC intended the first meaning. As CAPA points out, Bell's argument leads to the result that every essential service required to render payphone service, except local usage, would be subject to the new services test. This result would be nonsensical, and would certainly not encourage competition as required by the Act. The obvious reason for requiring other services provided to payphone providers to pass the new services test is a recognition that IPPs are themselves providing a retail service in competition with the LECs. It would make no sense to require the LECs to sell to the IPPs all but one essential service at cost-based rates, while allowing the LECs to charge retail rates for one essential service, namely, local usage. I find nothing in the FCC's orders that even remotely suggests that it intended such a result.

For the foregoing reasons, Bell's motion to dismiss is denied.

Order

THEREFORE, IT IS ORDERED:

1. That the motion to consolidate filed by CAPA with its complaint is denied.

2. That the motion to dismiss filed by Bell Atlantic-Pennsylvania, Inc. is denied.

Date: March 4, 1958

Michael C. Schnierle
Michael C. Schnierle
Administrative Law Judge

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE INQUIRY
INTO THE PAYPHONE TARIFFS OF
BELL ATLANTIC-MARYLAND, INC.

* -

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

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CASE NO. 8763

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PROPOSED ORDER OF HEARING EXAMINER

Filed: December 8, 1998

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

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STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

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Ronald E. Alper, on behalf of the Staff of the Public Service Commission of Maryland.



STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises out of the provisions and requirements of the Telecommunications Act of 1996 ("The Act" or "the Telecommunications Act"),¹ and also out of various orders issued by the Federal Communications Commission ("FCC") implementing the Act. At the Maryland Public Service Commission ("Commission") the case began with Bell Atlantic-Maryland's ("BA-MD," "the Company" or "Bell Atlantic") Transmittal No. 1012, which it filed on May 19, 1997. In Transmittal No. 1012 Bell Atlantic sought assurance that its payphone service was in compliance with orders of the Federal Communications Commission ("FCC"), which implemented Section 276 of the Telecommunications Act of 1996. Among the specific findings sought by Bell Atlantic were that its intrastate payphone rates were unsubsidized by access charges and that the Company's proposed rates for line side answer supervision, call screening, and pre-existing tariff rates for Bell Atlantic's own pay telephone lines meet the Federal New Services Test ("Test" or "NST").

Following BA-MD's May 19, 1997 filing, People's Telephone Company ("PTC" or "Peoples"), AT&T Communication of Maryland ("AT&T"), and the Office of Maryland People's Counsel ("MPC") made filings objecting to approval of BA-MD's May 19 petition and calling for an investigation into the Company's requests in Transmittal No. 1012. In a letter from the Commission's Executive Secretary dated June 17, 1997, the Commission accepted

¹ Telecommunications Act of 1996, Pub. LA No. 104-104, 110 Stat. 56 (1996).

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the Company's proffered tariffs for filing, docketed this matter as Case No. 8763, and delegated it to the Hearing Examiner Division.

A pre-hearing conference was held on July 11, 1997, at which BA-MD, AT&T, MCI, Peoples, Sprint Communications Company, L.P. ("Sprint"), MPC, and the Staff of the Public Service Commission ("Staff") were granted party status. Bell Atlantic-Maryland filed testimony by John A. Pehta, its Director-Economic Costs/Regulatory Support, and by Harold E. West, BA-MD's Director of Regulatory Support. Dr. Marvin H. Kahn, a principal of Exeter Associates, and Bruce W. Renard, General Counsel and Executive Vice President of People's Telephone Company, testified for Peoples. Harry J. Newett, Manager-Access Management, testified on behalf of AT&T. Ann A. Dean, Assistant Director of the Commission's Telecommunications Division, testified for Staff. Hearings for cross-examination of all pre-filed testimony were held on January 7 and 8, 1998; the parties submitted Initial Briefs on February 13, 1998, and Reply Briefs on March 6, 1998.

II. POSITIONS OF THE PARTIES

A. Bell Atlantic-Maryland

The issues to be decided in Case No. 8763 have narrowed since BA-MD's May 19, 1997 filing of Transmittal No. 1012. Bell Atlantic states in its Initial Brief that:

On December 5, 1997, BA-MD proposed further reductions in its rates for line side answer supervision and call screening to match the interstate BA-MD rates that had

STATE OF MARYLAND
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access charges and/or its exchange service operations. Bell Atlantic shall then permit discovery by the other parties which will be reasonably designed to confirm the basis for its Subsidy Report. Other parties to this matter are cautioned that discovery in Phase II must be focused on confirming or rebutting the extent of Bell Atlantic's intrastate payphone subsidies. Other parties must also complete their investigation of Bell Atlantic's Subsidy Report within 60 days after the Subsidy Report is filed. If no agreement of the parties as to the amount of the subsidy has been reached by the 60th day following the date on which Bell Atlantic files its Subsidy Report, that issue will be set for hearing.

The amount of the payphone subsidy ultimately determined will be removed from Bell Atlantic's intrastate carrier common line charge.

B. The New Services Test

We now address whether the Federal New Services Test, intended to insure that deregulated telecommunications offerings are essentially cost-based and unsubsidized, applies to local usage rates and to carrier common line charges offered by Bell Atlantic to Payphone Service Providers.

1. Usage

People's Counsel points out that measured or time sensitive usage charges are central to payphone service as currently provided. Therefore, if the New Services Test is to meaningfully impact payphone service, it must, in MPC's view, apply to usage